

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

THOMAS E. PEREZ, Secretary of Labor, :
United States Department of Labor, :

Plaintiff, :

v. :

SPECIAL POLICE FORCE CORP.; :
HÉCTOR RIVERA ORTIZ; and :
FREDDY DE JESUS, :

Defendants. :

COMPLAINT

Civil Action File No.

Plaintiff Thomas E. Perez, Secretary of Labor, United States Department of Labor, (the “Secretary”) alleges:

JURISDICTION AND VENUE

1. This action arises under Sections 16(c) and 17 of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201, *et seq.*, (“Act”), alleging that Defendants Special Police Force Corp., Héctor Rivera Ortiz, and Freddy De Jesus violated Section 6, 7 and 11(c), and 15(a)(2) and (a)(5) of the Act.

2. This Court has subject matter jurisdiction over this action pursuant to Section 17 of the Act and 28 U.S.C. §§ 1331 and 1345.

3. Venue with respect to this action lies within the District of Puerto Rico because a substantial part of the events and/or omissions giving rise to the claims herein occurred in this district.

PARTIES

4. Defendant Special Police Force Corp. (“Special Police Force”) is a corporation duly organized under the laws of the Commonwealth of Puerto Rico, having its principal office

and place of business at Urb Luis Munoz Rivera, Calle Acuarela 3-A, Guaynabo, Puerto Rico, 00969, within the jurisdiction and venue of this Court, where it is engaged in the business of providing security services.

5. Defendant Special Police Force has regulated the employment of all persons employed by it and acted directly and indirectly in the corporation's interests in relation to its employees, and is thus an employer of its employees within the meaning of Section 3(d) of the Act.

6. Defendant Héctor Rivera Ortiz ("Rivera") is one of the founders of Defendant Special Police Force and is presently the corporation's President, Treasurer, agent and sole owner.

7. Defendant Rivera was in active control of Defendant Special Police Force and regulated the employment of all persons employed by him, which included the ability to hire and fire employees, supervise and control employee work schedules or conditions of employment, determine the rate and method of payment, and/or maintain employment records. Accordingly, Rivera is a person acting directly or indirectly in the interests of the defendant corporation in relation to the employees, and is thus an employer within the meaning of Section 3(d) of the Act.

8. Defendant Freddy De Jesus ("De Jesus") is a supervisor at Defendant Special Police Force and also the Operations Manager at Defendant Special Police Force.

9. De Jesus was in active control of Defendant Special Police Force and regulated the employment of all persons employed by him, which included the ability to hire and fire employees, supervise and control employee work schedules or conditions of employment, and/or determine employee pay. Accordingly, De Jesus is a person acting directly or indirectly in the

interests of the defendant corporation in relation to the employees, and is thus an employer within the meaning of Section 3(d) of the Act.

10. The business activities of the Defendants, as described herein, are related and performed through unified operation or common control for a common business purpose and constitute an enterprise within the meaning of Section 3(r) of the Act.

11. Defendants Special Police Force, Rivera, and De Jesus have employed or are employing employees as security guards, including those employees listed in Exhibit A, in the activities of an enterprise engaged in commerce or in the production of goods for commerce, including the employment of employees that handle, sell, or otherwise work on goods or materials that have been moved in or produced for commerce by any person, such as firearms and vehicles.

12. The enterprise has an annual gross volume of sales made or business done in an amount not less than \$500,000 for the period covered by this Complaint.

13. Therefore, the employees are employed in an enterprise engaged in commerce or in the production of goods for commerce within the meaning of Section 3(s)(1)(A) of the Act.

ALLEGATIONS

14. Defendants provide security guard services to approximately thirty-four client entities across the Commonwealth of Puerto Rico, including supermarkets, villas, condominiums, and commercial businesses.

15. At all relevant times, Defendants employ or employed approximately 150 to 200 employees to serve as armed or unarmed security guards. The armed security guards carry firearms.

16. Defendants required their employees employed as security guards to wear uniforms.

17. Defendants posted their employees at the premises of Defendants' client entities, where the employees provided security services. Defendants assigned these posts to their employees.

18. Defendants set their employees' work schedules and required their employees to sign daily attendance sheets.

19. Defendants possessed vehicles which they used for business purposes, including visiting the various client entity job sites to supervise their employees.

20. Defendants set the rate of pay for their employees.

21. Defendants paid their employees a regular rate of pay which ranged from approximately \$7.25 to \$8.00 per hour.

22. Notwithstanding the circumstances concerning the relationship between Defendants and their employees who worked as armed or unarmed security guards as set forth above, Defendants misclassified their security guard employees as professional services, which is the equivalent to an independent contractor.

23. In certain workweeks, Defendants made deductions from their employees' pay for uniforms in the approximate amount of \$50.00 to \$75.00 per uniform, resulting in hourly wages that fell below the required hourly minimum wage or \$7.25 in those workweeks.

24. In certain workweeks, Defendants made deductions in the approximate amount of \$290.00 from their employees' pay resulting in hourly wages that fell below the required hourly minimum wage or \$7.25 in those workweeks. Upon information and belief, the deduction of \$290.00 represents an unlawful "security deposit" of one-week's salary.

25. As a result of these deductions, Defendants paid approximately 76 of their former and current employees at rates less than the applicable statutory minimum wage prescribed in Section 6 of the Act.

26. In certain workweeks, employees worked in excess of forty hours. Specifically, employees employed as security guards typically worked between approximately forty to sixty hours in a workweek.

27. For these workweeks, Defendants compensated their employees at their regular rate of pay regardless of the hours worked in excess of forty hours in a workweek.

28. Defendants' practice of paying straight time for hours in excess of forty continued even after they were advised by the Department of Labor's Wage and Hour Division that they needed to pay overtime properly.

29. As a result, Defendants failed to compensate approximately 210 former and current employees for work performed in workweeks longer than forty hours at a rate not less than one and one-half times the regular rate at which they were employed.

30. Defendants were required to make, keep and preserve records of the persons employed by them, including employee addresses, total hours worked each workweek, and total weekly straight-time earnings.

31. Defendants failed to make, keep, and preserve adequate and accurate records, including addresses for their employees, total hours worked each workweek, and total weekly straight-time earnings as required under Section 11 of the Act and as prescribed by the Regulations issued and found at 29 CFR Part 516.

32. Defendants have willfully and repeatedly violated the provisions of the Act as alleged above since at least April 29, 2012.

FIRST CAUSE OF ACTION

(Violation of Sections 6 and 15(a)(2) of the Act)

33. As set forth in the paragraphs above, through their practices of deducting money for uniforms and for a “security deposit,” Defendants have willfully and repeatedly violated and are violating the provisions of Sections 6 and 15(a)(2) of the Act, by paying approximately 76 former and current employees employed in an enterprise engaged in commerce or in the production of goods for commerce, wages at rates less than the applicable statutory minimum rate prescribed in Section 6 of the Act.

34. Accordingly, Defendants are liable for any unpaid minimum wages and an equal amount in liquidated damages under Section 16(c) of the Act, or, in the event liquidated damages are not awarded, unpaid minimum wages and prejudgment interest on said unpaid minimum wages under Section 17 of the Act.

SECOND CAUSE OF ACTION

(Violation of Section 7 and 15(a)(2) of the Act)

35. Based on the paragraphs above, Defendants have willfully and repeatedly violated Sections 7 and 15(a)(2) of the Act by employing approximately 210 former and current employees for workweeks longer than forty hours without compensating the employees at a rate not less than one and one-half the regular rate at which they were employed.

36. Accordingly, Defendants are liable for unpaid overtime compensation and an equal amount in liquidated damages under Section 16(c) of the Act or, in the event liquidated damages are not awarded, unpaid overtime compensation and prejudgment interest on said unpaid overtime compensation under Section 17 of the Act.

THIRD CAUSE OF ACTION

(Violation of Section 11(c) and 15(a)(5) of the Act)

37. Based on the paragraphs above, Defendants have willfully and repeatedly violated the provisions of Sections 11(c) and 15(a)(5) of the Act, in that Defendants failed to make, keep, and preserve adequate and accurate records, including addresses for their employees, total hours worked each workweek, and total weekly straight-time earnings, as prescribed by the Regulations issued and found at 29 CFR Part 516.

RELIEF REQUESTED

WHEREFORE, cause having been show, Plaintiff prays for judgment against Defendants providing the following relief:

1. For an injunction issued pursuant to Section 17 of the Act permanently restraining Defendants, their officers, agents, employees, and those persons in active concert or participation with Defendants from violating Sections 6, 7, 11(c), 15(a)(2) and 15(a)(5) of the Act; and

2. For an Order pursuant to Section 16(c) of the Act finding Defendants liable for unpaid minimum wage and overtime compensation found due to Defendants' employees listed on the attached Exhibit A and to any employees presently unknown to Plaintiff for the period covered by this Complaint, and an equal amount as liquidated damages; or

3. In the event liquidated damages are not awarded, for an injunction issued pursuant to Section 17 of the Act permanently restraining Defendants, their officers, agents, employees, and those persons in active concert or participation with Defendants from withholding the amount of unpaid minimum wage and overtime compensation found due to Defendants'

employees and prejudgment interest computed at the underpayment rate established by the Secretary of Treasury pursuant to 26 U.S.C. § 6621; and

4. For an Order awarding Plaintiff the costs of this action; and
5. For an Order granting such other and further relief as may be necessary and appropriate.

DATED: April 29, 2015
New York, NY

s/ M. Patricia Smith
M. PATRICIA SMITH
Solicitor of Labor

s/ Jeffrey S. Rogoff
JEFFREY S. ROGOFF
Regional Solicitor

s/ Andrew M. Katz
ANDREW M. KATZ (Govt. Atty. No. G01717)
Trial Attorney

U.S. Department of Labor
Office of the Regional Solicitor
New York, NY 10014
(646) 264-3650
Katz.Andrew@dol.gov
NY-SOL-ECF@dol.gov

Attorneys for THOMAS E. PEREZ
Secretary of Labor, Plaintiff

EXHIBIT A

Last Name	First Name
Acevedo Lopez	Benny
Acevedo Ortiz	Carlos
Acevedo Rivera	Merquiades
Acha Comas	Homar
Achaebrahimian Comas	Adam
Acosta Alago	Fernando
Alequin Sanchez	Pablo
Alvarez Jimenez	Alvaro
Andino Maldonado	Emmanuel
Andino Perez	Nicole
Andujar Mendez	Haidelys
Aponte	Nestor
Arroyo Hernandez	Jose
Arroyo Ortiz	Jose
Arzuaga Rivera	Daniel
Aviles Santiago	Jose
Ayala	Angel
Ayende Sanchez	Raquel
Baez Acevedo	Francisco
Berroa de Rosa	Joselin
Bravo Reyes	Carlos
Cabrera	Angel Luis
Cabrera Torres	Michael
Calderon Lopez	Angel
Calderon Romero	Giovanni
Camacho	Pablo
Canales	Carlos
Canales Rodriguez	Yolanda
Cancel Ortiz	Pedro
Cancel Rivera	Nelson
Cardona Nunez	Luis
Casillas Cosme	Luis
Castro Santos	Ariel
Castro Villanova	Carlos
Cesareo Gonzalez	Yolimar
Claudio Ramirez	Yesenia
Colon Ocasio	Jonathan

Colon Rodriguez	Gladys
Concepcion	Edgardo
Concepcion	Jose
Concepcion Claudio	Lemuel
Cordero Negron	Jose
Correa Rondon	Gilfred
Correa Torres	Maribel
Correa Velez	Juan
Cotto Maysonet	Lizardo
Cotto Vargas	Nitza
Cruz Camacho	Raul
Cruz Guandin	Marcos
Cruz Jurado	Carmen
Cruz Melendez	Rongie
Cruz Rosario	Ariane
Cruz Rosario	Jose
Cruz Sierra	Luis
De Jesus Brunet	Anthony
De Jesus Davila	Marisol
De Jesus Figueroa	Jorge
De Leon Cruzado	Jan Carlos
Diaz	Damaris
Diaz	Efrain
Diaz	Josephine
Diaz Colon	Angel
Diaz Otero	Luis
Diaz Pena	Jorge Luis
Diaz Rivera	Gabriel
Diaz, Yeinsix	Marilyn
Encarnacion	Jose
Escobar	Juan
Esquilin Ayala	Carlos
Estrada Medina	Edwin
Estrada Quinones	William
Figueroa	Jackeline
Flores Berrios	Jose
Fuentes	Javier
Gallardo Lopez	Agustin
Garcia Guerra	Omar
Garcia Ruiz	Ramser
Garcia Santos	Emma
Gil Peguero	Jose
Gonzalez	Jose

Gonzalez Marrero	Ibrahim
Gonzalez Martinez	Hector
Gonzalez Osiris	Ricardo
Gonzalez Rosario	Ferdinand
Gonzalez Torres	Carlos
Gotay Lopez	Angel
Guisti Varella	Pedro
Hernandez	Jesus
Hernandez	Carlos
Hernandez Duprey	Christian
Hernandez Rolon	Andres Obed
Hidalgo	Adelso
Hidalgo Diaz	Evelyn
Hidalgo Oyola	Jose
Jaime Gonzalez	Jose
Jimenez	Jonathan
Jimenez Gonzalez	Janzairo
Juarbe Rodriguez	Neisha
Kuilan Alvarez	Jose
Lebron	Samuel
Leon Flores	Rey
Llanes Tanco	Neftali
Lleras Diaz	Juan
Lora Correa	Rafael
Lugo Ojeda	Edwin
Maldonado Cortez	Jose
Maldonado Rivera	Felipe
Marquez Carrasquillo	Alfredo
Marrero Nunez	Carlos
Marrero Serrano	Moises
Martinez Garcia	Gabriel
Martinez Lopez	Jorge
Matos Alamo	Marcos
Matos Sosa	Gabriel
Mejias	Francheska
Miranda	Fernando
Miranda Acosta	Jorge
Miranda Vazquez	Rafael
Mojica Garcia	Jose
Molina Roses	Joshua
Montalvo Maldonado	Mariano
Morales Fernandez	Antonil
Morales Maldo	Margarita

Morales Vega	Jackeline
Morales Vega	Josue
Morell Martinez	Jose
Morla	Pedro
Narvaez Rivera	Luis
Nevarez Flores	Jose
Oliveras	Luis
Oliveras Garcia	Jose
Oliveras Mercado	Jose
Ortiz Class	Victor
Ortiz Cruz	Gloriana
Ortiz Flores	Luis
Ortiz Moreta	Jose
Ortiz Reyes	Almerida
Ortiz Reyes	Sixto
Ortiz Villanueva	Francisco
Osorio Perez	Kaitlyn
Osorio Rojas	Luis
Oyola Vazquez	Leyda
Oyola	Luis
Pabon	Francisco
Pagan Cruz	Joshua
Pagan Hernandez	Iris
Pardo Acosta	Alex
Perez	Nelson
Perez Perez	Roberto
Perez Rivera	Jose
Quiles Sepulveda	Alberto
Ramos Amador	Teresita
Ramos Correa	Dalier
Ramos Del Valle	Xavier
Ramos Ramirez	Orlando
Reyes Fontanez	Jaime
Rivera	Angel
Rivera	Zorimar
Rivera	Dennis
Rivera Alicea	Jonathan
Rivera Aquino	Jose
Rivera Diaz	Tomasito
Rivera Falu	Ernesto
Rivera Fuentes	Tahiri
Rivera Mojica	Jorge
Rivera Rodriguez	Miguel

Rivero Centeno	Carlos
Rodriguez	Angel
Rodriguez	Jose
Rodriguez	Ruth
Rodriguez	Jean Carlos
Rodriguez	Jorge
Rodriguez Castro	Lydia
Rodriguez Colon	Leslie
Rodriguez Diaz	Raul
Rodriguez Guzman	Lee
Rodriguez Perez	Jose
Rodriguez Reyes	Ivan
Rodriguez Rivera	Wilfredo
Rodriguez Soto	Felix
Rodriguez Valentin	Jose
Romero	Luis
Rosa	Erick
Rosado Batista	Carmen
Rosado Callejas	Luis
Rosario Rivera	Jose
Rouse Colon	Alfredo
Ruiz Maisonet	Blanco
Ruiz Mendez	Carlos
Saavedra	Jose
Salinas Rivera	Edwin
Sanchez Colon	Hector
Santiago Gonzalez	Roberto
Santiago Osorio	Miriam
Santiago Rivera	Bryan
Santos Cintron	Felix
Santos Ortiz	Miguel
Serrano	Alexander
Serrano Del Valle	Yolanda
Serrano Reyes	Edwin
Sierra Cruz	Luis
Sierra Vazquez	Juan
Soto Padilla	Jose
Toledo Mcklin	Marie
Torres Caraballo	Yang Lee
Torres Morales	David
Trinidad Ramos	Damara
Valentin Cruz	Miguel
Vazquez Santos	Idelfonso

Vazquez Torres	Betsy
Vega	Rodolfo
Vega Jorge	Jorge
Vega Olivera	Hector
Velazquez	Iris
Velazquez Gonzalez	Rebeca
Velez	Giovany
Viera Burgos	Christian
Villalba Rivera	Jorge
Villanueva	Rauvic